



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes DRI, CNR, FF

Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for Unpaid Rent, to dispute an additional rent increase and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was personally served to the landlord on February 11, 2011. The landlord was deemed to be served the hearing documents on February 16, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to cancel the Notice to End Tenancy?
- Is there an additional rent increase?

Background and Evidence

Both Parties agree that this tenancy started on August 01, 2010. Rent at that time was \$1,500.00 per month. A new tenancy agreement was entered into on September 14, 2010 by mutual agreement of both parties. This new tenancy agreement shows the tenants rent to be \$1,350.00 per month due on the first of each month. The tenant paid a security deposit of \$750.00 on July 20, 2010.

The tenant testifies that the landlord told him his rent would be increased to \$1,600.00 per month because he had another person staying with him at his rental unit. The tenant states this person was just a guest that stayed for a week and the landlord should not be able to increase his rent for guests.

The landlord testifies that she told the tenant she would have to increase his rent if another occupant moved into the rental unit as it was rented for a single person. The landlord states she did not actually increase the tenants rent it was just a discussion that took place between them.

The landlord testifies that the tenant owes \$250.00 from his January, 2011 rent and he failed to pay his rent of \$1,350.00 on February 01, 2011. The landlord served the tenant with a 10 Day Notice to End Tenancy dated February 04, 2011. The landlord states she realized this Notice was an out of date form so she re-served the tenant with a current 10 Day Notice by posting it to his door on February 15, 2011. This Notice states the tenant has five days to either pay the outstanding rent or dispute the notice or the tenancy will end on February 24, 2011. The notice also states the tenant owes rent to the sum of \$1,600.00 for January and February, 2011.

The landlord requests that the 10 Day Notice to End Tenancy is upheld and seeks an Order of Possession for March 01, 2011.

The tenant does not dispute that he owes the outstanding rent but states as he thought the landlord was increasing his rent to \$1,600.00 he could not afford it and so has decided to move out.

Analysis

Section 26 of the *Act* states: *a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.* Both parties agree that rent is due on the first day of each month and the tenant agrees that he has a balance of rent outstanding for January, 2011 of \$250.00 and did not pay his rent for February, 2011 of \$1,350.00. Consequently, I find the landlord is entitled to recover rent arrears of **\$1,600.00** pursuant to s. 67 of the *Act*.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted to the door of the tenants unit it is deemed served three days later and therefore the date of the Notice has been amended to February 28, 2011 pursuant to s. 53 of the *Act*. The tenant did not pay the outstanding rent within five days but did apply to cancel the Notice to End Tenancy.

Based on the foregoing, I find that the tenant owes rent to the landlord and consequently the Notice is upheld and I grant the landlord an order of possession pursuant to section 55 of the *Act*.

With regard to the tenants application to dispute an additional rent increase. I am satisfied that no additional rent increase has been made by the landlord and the tenants rent remains at \$1,350.00 as agreed on September 14, 2010. Consequently, this section of the tenants claim is dismissed.

As the tenant has been unsuccessful with his claim I find he must bear the cost of filing his own application.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 25, 2011.

Residential Tenancy Branch